shall be made on Form I–485. The application date of the I–485 shall be the date of acceptance by the Service as properly filed. If the application date is other than the fee receipt date it must be noted and initialed by a Service officer. The date of application for adjustment of status is the closing date for computing the residence and physical presence requirement. The applicant must have complied with all requirements as of the date of application.

(b) *Documentation.* All documents must be submitted in accordance with §103.2(b) of this chapter. The application shall be accompanied by documentary evidence establishing the aggregate residence and physical presence required. Documentary evidence may include official employment verification, records of official or personnel transactions or recordings of events occurring during the period of claimed residence and physical presence. Affidavits of credible witnesses may also be accepted. Persons unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living, if affidavits of the parents or other persons are submitted attesting to the claimed residence and physical presence. The claimed family relationship to the principle G–4 international organization officer or employee must be substantiated by the submission of verifiable civil documents.

(c) *Residence and physical presence requirements.* All applicants applying under sections 101(a)(27)(I) (i), (ii), and (iii) of the INA must have resided and been physically present in the United States for a designated period of time.

For purposes of this section only, an absence from the United States to conduct official business on behalf of the employing organization, or approved customary leave shall not be subtracted from the aggregated period of required residence or physical presence for the current or former G–4 officer or employee or the accompanying spouse and unmarried sons or daughters of such officer or employee, provided residence in the United States is maintained during such absences, and the duty station of the principle G–4 nonimmigrant continues to be in the United States. Absence from the United States by the G–4 spouse or unmarried son or daughter without the principle G–4 shall not be subtracted from the aggregate period of residence and physical presence if on customary leave as recognized by the international organization employer. Absence by the unmarried son or daughter while enrolled in a school outside the United States will not be counted toward the physical presence requirement.

(d) *Maintenance of nonimmigrant status.* Section 101(a)(27)(I) (i), and (ii) requires the applicant to accrue the required period of residence and physical presence in the United States while maintaining status as a G–4 or N nonimmigrant. Section 101(a)(27)(I)(iii) requires such time accrued only in G–4 nonimmigrant status.

Maintaining G–4 status for this purpose is defined as maintaining qualified employment with a "G" international organization or maintaining the qualifying family relationship with the G–4 international organization officer or employee. Maintaining status as an N nonimmigrant for this purpose requires the qualifying family relationship to remain in effect. Unauthorized employment will not remove an otherwise eligible alien from G–4 status for residence and physical presence requirements, provided the qualifying G–4 status is maintained.

[54 FR 5927, Feb. 7, 1989]

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

Sec.

AUTHORITY: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

EFFECTIVE DATE NOTE: At 75 FR 79275, Dec. 20, 2010, the authority citation to Part 103 was revised, effective Jan. 19, 2011. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 48 U.S.C. 1806; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*), E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted.

§ 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* The following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, are designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: Immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, immigration enforcement agent, intelligence officer, intelligence agent, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), applications adjudicator, contact representative, legalization adjudicator, legalization officer, legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter. Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

[68 FR 10923, Mar. 6, 2003, as amended at 68 FR 35275, June 13, 2003; 69 FR 35234, June 24, 2004]

§ 103.2 Applications, petitions, and other documents.

(a) *Filing*—(1) *General.* Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Except as exempted by paragraph (e) of this section, forms which

require an applicant, petitioner, sponsor, beneficiary, or other individual to complete Form FD–258, Applicant Card, must also be filed with the service fee for fingerprinting, as required by §103.7(b)(1), for each individual who requires fingerprinting. Filing fees and fingerprinting service fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in §1.1(f) of this chapter, by an attorney outside the United States as defined in §292.1(a)(6) of this chapter, or by an accredited representative as defined in §292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* An application or petition must be filed as indicated in the instructions on the respective form.

(7) *Receipt date*—(i) *General.* An application or petition received in a USCIS office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date. An application or petition taken to a local USCIS office for the completion of biometric information prior to filing at a service center shall be considered received when physically received at a service center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to pay the filing fee and associated service charge within 14 calendar days, without extension. If the application or petition is pending and these charges are not paid within 14 days, the application or petition shall be rejected as improperly filed. If the application or petition was already approved, and these charges are not paid, the approval shall be automatically revoked because it was improperly field. If the application or petition was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing or fingerprinting fee. New fees will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to

cover the cost of the previous rejection, revocation, or other action.

(b) *Evidence and processing*—(1) *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits*—(i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(iii) *Evidence provided with a self-petition filed by a spouse or child of abusive citizen or resident.* The USCIS will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS.

(3) *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms, and documents issued to support an application or petition (such as labor certifications, Form DS 2019, medical examinations, affidavits, formal consultations, letters of current employment and other statements) must be submitted in the original unless previously filed with USCIS. Official documents issued by the Department or by the former Immigration and Naturalization Service need not be submitted in the original unless required by USCIS. Unless otherwise required by the applicable regulation or form's instructions, a legible photocopy of any other supporting document may be submitted. Applicants and petitioners need only submit those original documents necessary to support the benefit sought. However, original documents

submitted when not required will remain a part of the record.

(5) *Request for an original document.* USCIS may, at any time, request submission of an original document for review. The request will set a deadline for submission of the original document. Failure to submit the requested original document by the deadline may result in denial or revocation of the underlying application or benefit. An original document submitted in response to such a request, when no longer required by USCIS, will be returned to the petitioner or applicant upon completion of the adjudication. If USCIS does not return an original document within a reasonable time after completion of the adjudication, the petitioner or applicant may request return of the original document by submitting a properly completed and signed Form G–884 to the adjudicating USCIS office.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The USCIS may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for Evidence; Notice of Intent to Deny*—(i) *Evidence of eligibility or ineligibility.* If the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the evidence of record establishes both eligibility and that the petitioner or applicant warrants a favorable exercise of discretion. If the record evidence establishes ineligibility, the application or petition will be denied on that basis.

(ii) *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) *Other evidence.* If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

(iv) *Process.* A request for evidence or notice of intent to deny will be in writing and will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond. The request for evidence or notice of intent to deny will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks, nor shall the maximum response time provided in a notice of intent to deny exceed thirty days. Additional time to respond to a request for evidence or notice of intent to deny may not be granted.

(9) *Request for appearance.* An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition may be required to appear for fingerprinting or for an interview. A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or

issued to a beneficiary, sponsor, or other individual. The applicant, petitioner, sponsor, beneficiary, or other individual may appear as requested by USCIS, or prior to the dates and times for fingerprinting or of the date and time of interview:

(i) The individual to be fingerprinted or interviewed may, for good cause, request that the fingerprinting or interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence for fingerprinting or interview rescheduling*—(i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, sponsor, beneficiary, or other individual who requires fingerprinting requests that the fingerprinting appointment or interview be rescheduled, any time period imposed on USCIS processing will start over from the date of receipt of the required initial evidence or request for fingerprint or interview rescheduling. If USCIS requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on USCIS for processing will be suspended as of the date of request. It will resume at the same point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the evidence.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The USCIS may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Responding to a request for evidence or notice of intent to deny.* In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the application or petition. All requested materials must be submitted together at one time, along with the original USCIS request for evidence or notice of intent to deny. Submission of only some of the requested evidence will be considered a request for a decision on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or a notice of intent to deny or to appear for interview or biometrics capture*—(i) *Failure to submit evidence or respond to a notice of intent to deny.* If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

(ii) *Failure to appear for biometrics capture, interview or other required in-person process.* Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear for biometrics capture, an interview, or other required in-person process but the person does not appear, the application or petition shall be considered abandoned and denied unless by

the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

(14) *Effect of request for decision.* Where an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for required fingerprinting or for a required interview, or to give required testimony, shall result in the denial of the related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The USCIS acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

(16) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) *Derogatory information unknown to petitioner or applicant.* If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) *Discretionary determination.* Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the USCIS Director or his or her designee has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) *Classified information.* An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the USCIS Director or his or her designee should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The USCIS Director's or his or her designee's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(17) *Verifying claimed permanent resident status*—(i) *Department records.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States or was formerly a permanent resident of the United States will be verified from

official Department records. These records include alien and other files, arrival manifests, arrival records, Department index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Permanent Resident Cards (Form I–551), Alien Registration Receipt Cards (Form I–151), other registration receipt forms (Forms AR–3, AR–3a, and AR–103, provided that such forms were issued or endorsed to show admission for permanent residence), passports, and reentry permits. An official record of a Department index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Department in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records will be regarded as establishing lawful admission for permanent residence.

(ii) *Assisting self-petitioners who are spousal-abuse victims.* If a self-petitioner filing a petition under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

(18) *Withholding adjudication.* A district director may authorize withholding adjudication of a visa petition or other application if the district director determines that an investigation has been undertaken involving a matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition, and that the disclosure of information to the applicant or petitioner in connection with the adjudication of the application or petition would prejudice the ongoing investigation. If an investigation has been undertaken and has not been completed within one year of its inception, the district director shall review the matter and determine whether adjudication of the petition or application should be held in abeyance for six months or until the investigation is completed, whichever comes sooner. If, after six months of the district director's determination, the investigation has not been completed, the matter shall be reviewed again by the district director and, if he/she concludes that more time is needed to complete the investigation, adjudication may be held in abeyance for up to another six months. If the investigation is not completed at the end of that time, the matter shall be referred to the regional commissioner, who may authorize that adjudication be held in abeyance for another six months. Thereafter, if the Associate Commissioner, Examinations, with the concurrence of the Associate Commissioner, Enforcement, determines it is necessary to continue to withhold adjudication pending completion of the investigation, he/she shall review that determination every six months.

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to §103.2(a), that representative shall also be notified. Documents produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

(c)–(d) [Reserved]

(e) *Fingerprinting*—(1) *General.* USCIS regulations in this chapter, including the instructions to benefit applications and petitions, require certain applicants, petitioners, beneficiaries, sponsors, and other individuals to be fingerprinted on Form FD–258, Applicant Card, for the purpose of conducting criminal background checks. On and after December 3, 1997, USCIS

will accept Form FD–258, Applicant Card, only if prepared by a USCIS office, a registered State or local law enforcement agency designated by a cooperative agreement with USCIS to provide fingerprinting services (DLEA), a United States consular office at United States embassies and consulates, or a United States military installation abroad.

(2) *Fingerprinting individuals residing in the United States.* Beginning on December 3, 1997, for naturalization applications, and on March 29, 1998, for all other applications and petitions, applications and petitions for immigration benefits shall be filed as prescribed in this chapter, without completed Form FD–258, Applicant Card. After the filing of an application or petion, USCIS will issue a notice to all individuals who require fingerprinting and who are residing in the United States, as defined in section 101(a)(38) of the Act, and request their appearance for fingerprinting at a USCIS office or other location designated by USCIS, to complete Form FD–258, Applicant Card, as prescribed in paragraph (b)(9) of this section.

(3) *Fingerprinting individuals residing abroad.* Individuals who require fingerprinting and whose place of residence is outside of the United States, must submit a properly completed Form FD–258, Applicant Card, at the time of filing the application or petition for immigration benefits. In the case of individuals who reside abroad, a properly completed Form FD–258, Applicant Card, is one prepared by USCIS, a United States consular office at a United States embassy or consulate or a United States military installation abroad. If an individual who requires fingerprinting and is residing abroad fails to submit a properly completed Form FD–258, Applicant Card, at the time of filing an application or petition, USCIS will issue a notice to the individual requesting submission of a properly completed Form FD–258, Applicant Card. The applicant or petitioner will also be notified of the request for submission of a properly completed Form FD–258, Applicant Card. Failure to submit a properly completed Form FD–258, Applicant Card, in response to such a request within the time allotted in the notice will result in denial of the application or petition for failure to submit a properly completed Form FD–258, Applicant Card. There is no appeal from denial of an application or petition for failure to submit a properly completed Form FD–258, Applicant Card. A motion to re-open an application or petition denied for failure to submit a properly completed Form FD–258, Applicant Card, will be granted only on proof that:

(i) A properly completed Form FD–258, Applicant Card, was submitted at the time of filing the application or petition;

(ii) A properly completed Form FD–258, Applicant Card, was submitted in response to the notice within the time allotted in the notice; or

(iii) The notice was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified USCIS, in writing, of a change of address or change of representation subsequent to filing and before the notice was sent and USCIS notice was not sent to the new address.

(4) *Submission of service fee for fingerprinting*—(i) *General.* The USCIS will charge a fee, as prescribed in §103.7(b)(1), for fingerprinting at a USCIS office or a registered State or local law enforcement agency designated by a cooperative agreement with the USCIS to provide fingerprinting services. Applications and petitions for immigration benefits shall be submitted with the service fee for fingerprinting for all individuals who require fingerprinting and who reside in the United States at the time of filing the application or petition.

(ii) *Insufficient service fee for fingerprinting; incorrect fees.* Applications and petitions for immigration benefits received by USCIS without the correct service fee for fingerprinting will not be rejected as improperly filed, pursuant to paragraph (a)(7)(i) of this section. However, the application or petition will not continue processing and USCIS will not issue a notice requesting appearance for fingerprinting to the individuals who require fingerprinting until the correct service

fee for fingerprinting has been submitted. The USCIS will notify the remitter of the filing fee for the application or petition of the additional amount required for the fingerprinting service fee and request submission of the correct fee. The USCIS will also notify the applicant or petitioner, and, when appropriate, the applicant or petitioner's representative, as defined in paragraph (a)(3) of this section, of the deficiency. Failure to submit the correct fee for fingerprinting in response to a notice of deficiency within the time allotted in the notice will result in denial of the application or petition for failure to submit the correct service fee for fingerprinting. There is no appeal from the denial of an application or petition for failure to submit the correct service fee for fingerprinting. A motion to re-open an application or petition denied for failure to submit the correct service fee for fingerprinting will be granted only on proof that:

(A) The correct service fee for fingerprinting was submitted at the time of filing the application or petition;

(B) The correct service fee for fingerprinting was submitted in response to the notice of deficiency within the time allotted in the notice; or

(C) The notice of deficiency was sent to an address other than the address on the application or petition, or the notice of representation, or that the applicant or petitioner notified USCIS, in writing, of a change of address or change of representation subsequent to filing and before the notice of deficiency was sent and USCIS notice of deficiency was not sent to the new address.

(iii) *Non-payment of service fee for fingerprinting.* If a check or other financial instrument used to pay a service fee for fingerprinting is subsequently returned as not payable, the remitter shall be notified and requested to pay the correct service fee for fingerprinting and any associated service charges within 14 calendar days. The USCIS will also notify the applicant or petitioner and, when appropriate, the applicant or petitioner's representative as defined in paragraph (a)(3) of this section, of the non-payment and request to pay. If the correct service fee for fingerprinting and associated service charges are not paid within 14 calendar days, the application or petition will be denied for failure to submit the correct service fee for fingerprinting.

[29 FR 11956, Aug. 21, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §103.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EDITORIAL NOTE: At 72 FR 19106, Apr. 17, 2007, §103.2 (d)(2) was amended by revising the terms "the Service" or "Service" to read "USCIS"; however, the amendment could not be incorporated because paragraph (d)(2) was removed and reserved.

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals*—(1) *General*—(i) *Denial of application or petition.* When a Service officer denies an application or petition filed under §103.2 of this part, the officer shall explain in writing the specific reasons for denial. If Form I–292 (a denial form including notification of the right of appeal) is used to notify the applicant or petitioner, the duplicate of Form I–292 constitutes the denial order.

(ii) *Appealable decisions.* Certain unfavorable decisions on applications, petitions, and other types of cases may be appealed. Decisions under the appellate jurisdiction of the Board of Immigration Appeals (Board) are listed in §3.1(b) of this chapter. Decisions under the appellate jurisdiction of the Associate Commissioner, Examinations, are listed in §103.1(f)(2) of this part.

(iii) *Appeal*—(A) *Jurisdiction.* When an unfavorable decision may be appealed, the official making the decision shall state the appellate jurisdiction and shall furnish the appropriate appeal form.

(B) *Meaning of affected party.* For purposes of this section and §§103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

(C) *Record of proceeding.* An appeal and any cross-appeal or briefs become part of the record of proceeding.

(D) *Appeal filed by Service officer in case within jurisdiction of Board.* If an appeal is filed by a Service officer, a copy must be served on the affected party.

(iv) *Function of Administrative Appeals Unit (AAU).* The AAU is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations.

(v) *Summary dismissal.* An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The filing by an attorney or representative accredited under 8 CFR 292.2(d) of an appeal which is summarily dismissed under this section may constitute frivolous behavior as defined in 8 CFR 292.3(a)(15). Summary dismissal of an appeal under §103.3(a)(1)(v) in no way limits the other grounds and procedures for disciplinary action against attorneys or representatives provided in 8 CFR 292.2 or in any other statute or regulation.

(2) *AAU appeals in other than special agricultural worker and legalization cases*—(i) *Filing appeal.* The affected party shall file an appeal on Form I–290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

(ii) *Reviewing official.* The official who made the unfavorable decision being appealed shall review the appeal unless the affected party moves to a new jurisdiction. In that instance, the official who has jurisdiction over such a proceeding in that geographic location shall review it.

(iii) *Favorable action instead of forwarding appeal to AAU.* The reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. However, that official is not precluded from reopening a proceeding or reconsidering a decision on his or her own motion under §103.5(a)(5)(i) of this part in order to make a new decision favorable to the affected party after 45 days of receipt of the appeal.

(iv) *Forwarding appeal to AAU.* If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AAU in Washington, DC.

(v) *Improperly filed appeal*—(A) *Appeal filed by person or entity not entitled to file it—(1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(*2*) *Appeal by attorney or representative without proper Form G–28—*(*i*) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G–28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(*ii*) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G–28 to the official's office within 15 days of the request. If Form G–28 is not submitted within the time allowed, the official may, on his or her own motion, under §103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(*iii*) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G–28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative

submits a properly executed Form G–28 entitling that person to file the appeal.

(B) *Untimely appeal—(1) Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in §103.5(a)(2) of this part or a motion to reconsider as described in §103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

(vi) *Brief.* The affected party may submit a brief with Form I–290B.

(vii) *Additional time to submit a brief.* The affected party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one.

(viii) *Where to submit supporting brief if additional time is granted.* If the AAU grants additional time, the affected party shall submit the brief directly to the AAU.

(ix) *Withdrawal of appeal.* The affected party may withdraw the appeal, in writing, before a decision is made.

(x) *Decision on appeal.* The decision must be in writing. A copy of the decision must be served on the affected party and the attorney or representative of record, if any.

(3) *Denials and appeals of special agricultural worker and legalization applications and termination of lawful temporary resident status under sections 210 and 245A.* (i) Whenever an application for legalization or special agricultural worker status is denied or the status of a lawful temporary resident is terminated, the alien shall be given written notice setting forth the specific reasons for the denial on Form I–692, Notice of Denial. Form I–692 shall also contain advice to the applicant that he or she may appeal the decision and that such appeal must be taken within 30 days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I–692 shall additionally provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I–692 will serve as a final notice of ineligibility.

(ii) Form I–694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I–694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the applicant and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the application be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that:

(A) Fails to state the reason for appeal;

(B) Is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner; or

(C) Is patently frivolous; will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(4) *Denials and appeal of Replenishment Agricultural Worker petitions and waivers and termination of lawful temporary resident status under section 210A.* (i) Whenever a petition for Replenishment Agricultural Worker status, or a request for a waiver incident to such filing, is denied in accordance with the provisions of part 210a of this title, the alien shall be given written notice setting forth the specific reasons for the denial on Form I–692, Notice of Denial. Form I–692 shall also contain advice to the alien that he or she may appeal the decision and that such appeal must be taken within thirty (30) days after service of the notification of decision accompanied by any additional new evidence, and a supporting brief if desired. The Form I–692 shall additionally

provide a notice to the alien that if he or she fails to file an appeal from the decision, the Form I–692 shall serve as a final notice of ineligibility.

(ii) Form I–694, Notice of Appeal, in triplicate, shall be used to file the appeal, and must be accompanied by the appropriate fee. Form I–694 shall be furnished with the notice of denial at the time of service on the alien.

(iii) Upon receipt of an appeal, the administrative record will be forwarded to the Administrative Appeals Unit as provided by §103.1(f)(2) of this part for review and decision. The decision on the appeal shall be in writing, and if the appeal is dismissed, shall include a final notice of ineligibility. A copy of the decision shall be served upon the petitioner and his or her attorney or representative of record. No further administrative appeal shall lie from this decision, nor may the petition be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings.

(iv) Any appeal which is filed that: Fails to state the reason for the appeal; is filed solely on the basis of a denial for failure to file the petition for adjustment of status under part 210a of this title in a timely manner; or is patently frivolous, will be summarily dismissed. An appeal received after the thirty (30) day period has tolled will not be accepted for processing.

(b) *Oral argument regarding appeal before AAU*—(1) *Request.* If the affected party desires oral argument, the affected party must explain in writing specifically why oral argument is necessary. For such a request to be considered, it must be submitted within the time allowed for meeting other requirements.

(2) *Decision about oral argument.* The Service has sole authority to grant or deny a request for oral argument. Upon approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in §1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in §103.9(a) of this part.

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984; 52 FR 16192, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20769, 20775, May 21, 1990; 55 FR 23345, June 7, 1990; 57 FR 11573, Apr. 6, 1992; 68 FR 9832, Feb. 28, 2003]

§103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases*—(1) *General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party.* When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I–290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish

to submit a brief, the affected party may waive the 30-day period.

(3) *Favorable action.* The Service officer to whom a case is certified may suspend the 30-day period for submission of a brief if that officer takes action favorable to the affected party.

(4) *Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(5) *Certification to AAU.* A case described in paragraph (a)(4) of this section may be certified to the AAU.

(6) *Appeal to Board.* In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under §3.1(b) of this chapter.

(7) *Other applicable provisions.* The provisions of §103.3(a)(2)(x) of this part also apply to decisions on certified cases. The provisions of §103.3(b) of this part also apply to requests for oral argument regarding certified cases considered by the AAU.

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in §103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

[52 FR 661, Jan. 8, 1987, as amended at 53 FR 43985, Oct. 31, 1988; 55 FR 20770, May 21, 1990]

§103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases*—(1) *When filed by affected party*—(i) *General.* Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision. Motions to reopen or reconsider are not applicable to proceedings described in §274a.9 of this chapter. Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

(ii) *Jurisdiction.* The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In that instance, the new official having jurisdiction is the official over such a proceeding in the new geographical locations.

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290B and may be accompanied by a brief. It must be:

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) Accompanied by a nonrefundable fee as set forth in §103.7;

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(D) Addressed to the official having jurisdiction; and

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

(iv) *Effect of motion or subsequent application or petition.* Unless the Service directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date.

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A

motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

(i) The requested evidence was not material to the issue of eligibility;

(ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

(5) *Motion by Service officer*—(i) *Service motion with decision favorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision in order to make a new decision favorable to the affected party, the Service officer shall combine the motion and the favorable decision in one action.

(ii) *Service motion with decision that may be unfavorable to affected party.* When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(6) *Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of a motion may be applied to the AAU only if the original decision was appealable to the AAU.

(7) *Other applicable provisions.* The provisions of §103.3(a)(2)(x) of this part also apply to decisions on motions. The provisions of §103.3(b) of this part also apply to requests for oral argument regarding motions considered by the AAU.

(8) *Treating an appeal as a motion.* The official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion.

(b) *Motions to reopen or reconsider denials of special agricultural worker and legalization applications.* Upon the filing of an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit), the Director of a Regional Processing Facility or the consular officer at an Overseas Processing Office may *sua sponte* reopen any proceeding under his or her jurisdiction opened under part 210 or 245a of this chapter and may reconsider any decision rendered in such proceeding. The new decision must be served on the appellant within 45 days of receipt of any brief and/or new evidence, or upon expiration of the time allowed for the submission of a brief. The Associate Commissioner, Examinations, or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that Unit under part 210 or 245a of this chapter and reconsider any decision rendered in such proceeding. Motions to reopen a proceeding or reconsider a decision under part 210 or 245a of this chapter shall not be considered.

(c) *Motions to reopen or reconsider decisions on replenishment agricultural worker petitions.* (1) The director of a regional processing facility may *sua sponte* reopen any proceeding under

part 210a of this title which is within his or her jurisdiction and may render a new decision. This decision may reverse a prior favorable decision when it is determined that there was fraud during the registration or petition processes and the petitioner was not entitled to the status granted. The petitioner must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds for reopening the petition before a new decision is rendered.

(2) The Associate Commissioner, Examinations or the Chief of the Administrative Appeals Unit may *sua sponte* reopen any proceeding conducted by that unit under part 210a of this title and reconsider any decision rendered in such proceeding.

(3) Motions to reopen a proceeding or reconsider a decision under part 210a of this title shall not be considered.

[27 FR 7562, Aug. 1, 1962, as amended at 30 FR 12772, Oct. 7, 1965; 32 FR 271, Jan. 11, 1967; 52 FR 16193, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20770, 20775, May 21, 1990; 55 FR 25931, June 25, 1990; 56 FR 41782, Aug. 23, 1991; 59 FR 1463, Jan. 11, 1994; 61 FR 18909, Apr. 29, 1996; 62 FR 10336, Mar. 6, 1997; 70 FR 50957, Aug. 29, 2005]

§ 103.5a Service of notification, decisions, and other papers by the Service.

This section states authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers (except warrants and subpoenas) in administrative proceedings before Service officers as provided in this chapter.

(a) *Definitions*—(1) *Routine service.* Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(2) *Personal service.* Personal service, which shall be performed by a Government employee, consists of any of the following, without priority or preference:

(i) Delivery of a copy personally;

(ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;

(iii) Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(3) *Personal service involving notices of intention to fine.* In addition to any of the methods of personal service listed in paragraph (a)(2) of this section, personal service of Form I–79, Notice of Intention to Fine, may also consist of delivery of the Form I–79 by a commercial delivery service at the carrier's address on file with the National Fines Office, the address listed on the Form I–849, Record for Notice of Intent to Fine, or to the office of the attorney or agent representing the carrier, provided that such a commercial delivery service requires the addressee or other responsible party accepting the package to sign for the package upon receipt.

(b) *Effect of service by mail.* Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

(c) *When personal service required*—(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

(2) *Persons confined, minors, and incompetents*—(i) *Persons confined.* If a person is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings initiated against him, service shall be made both upon him and upon the person in charge of the institution or the hospital. If the confined person is not competent to understand, service shall be made only on the person in charge of the institution or hospital in which he is confined, such service being deemed service on the confined person.

(ii) *Incompetents and minors.* In case of mental incompetency, whether or not confined in an institution, and in the case of a minor under 14 years of age,

service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend.

(d) *When personal service not required.* Service of other types of papers in proceedings described in paragraph (c) of this section, and service of any type of papers in any other proceedings, may be accomplished either by routine service or by personal service.

[37 FR 11470, June 8, 1972, as amended at 39 FR 23247, June 27, 1974; 62 FR 10336, Mar. 6, 1997; 64 FR 17944, Apr. 13, 1999]

§ 103.5b Application for further action on an approved application or petition.

(a) *General.* An application for further action on an approved application or petition must be filed on Form I–824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form. Form I–824 may accompany the original application or petition, or may be filed after the approval of the original application or petition.

(b) *Requested actions.* A person whose application was approved may, during its validity period, apply for a duplicate approval notice or any other action specifically provided for on the form. A petitioner whose petition was approved may, during the validity of the petition, request that the Service:

(1) Issue a duplicate approval notice;

(2) Notify another consulate of the approved petition;

(3) Notify a consulate of the person's adjustment of status for the purpose of visa issuance to dependents; or

(4) Take any other action specifically provided for on the form.

(c) *Processing.* The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I–824.

[59 FR 1463, Jan. 11, 1994]

§ 103.6 Surety bonds.

(a) *Posting of surety bonds*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I–312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I–312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders*—(i) *General.* Bond riders shall be prepared on Form I–351, Bond Riders, and attached to Form I–352. If a condition to be included in a bond is not on Form I–351, a rider containing the condition shall be executed.

(ii) [Reserved]

(b) *Acceptable sureties.* Either a company holding a certificate from the Secretary of the Treasury under 6 U.S.C. 6–13 as an acceptable surety on Federal bonds, or a surety who deposits cash or U.S. bonds or notes of the class described in 6 U.S.C. 15 and Treasury Department regulations issued pursuant thereto and which are not redeemable within 1 year from the date they are offered for deposit is an acceptable surety.

(c) *Cancellation*—(1) *Public charge bonds.* A public charge bond posted for an immigrant shall be cancelled when the alien dies, departs permanently from the United States or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. The district director may cancel a public charge bond at any time if he/she finds that the immigrant is not likely to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond shall be cancelled by the district director upon review following the fifth anniversity of the admission of the immigrant, provided that the alien has filed Form I–356, Request for Cancellation of Public Charge Bond, and the

district director finds that the immigrant did not become a public charge prior to the fifth anniversary. If Form I–356 is not filed, the bond shall remain in effect until the form is filed and the district director reviews the evidence supporting the form and renders a decision to breach or cancel the bond.

(2) *Maintenance of status and departure bonds.* When the status of a nonimmigrant who has violated the conditions of his admission has been adjusted as a result of administrative or legislative action to that of a permanent resident retroactively to a date prior to the violation, any outstanding maintenance of status and departure bond shall be canceled. If an application for adjustment of status is made by a nonimmigrant while he is in lawful temporary status, the bond shall be canceled if his status is adjusted to that of a lawful permanent resident or if he voluntarily departs within any period granted to him. As used in this paragraph, the term *lawful temporary status* means that there must not have been a violation of any of the conditions of the alien's nonimmigrant classification by acceptance of unauthorized employment or otherwise during the time he has been accorded such classification, and that from the date of admission to the date of departure or adjustment of status he must have had uninterrupted Service approval of his presence in the United States in the form of regular extensions of stay or dates set by which departure is to occur, or a combination of both. An alien admitted as a nonimmigrant shall not be regarded as having violated his nonimmigrant status by engaging in employment subsequent to his proper filing of an application for adjustment of status under section 245 of the Act and part 245 of this chapter. A maintenance of status and departure bond posted at the request of an American consular officer abroad in behalf of an alien who did not travel to the United States shall be canceled upon receipt of notice from an American consular officer that the alien is outside the United States and the nonimmigrant visa issued pursuant to the posting of the bond has been canceled or has expired.

(3) *Substantial performance.* Substantial performance of all conditions imposed by the terms of a bond shall release the obligor from liability.

(d) *Bond schedules*—(1) *Blanketbonds for departure of visitors and transits.* The amount of bond required for various numbers of nonimmigrant visitors or transits admitted under bond on Forms I–352 shall be in accordance with the following schedule:

Aliens

1 to 4—$500 each.
5 to 9—$2,500 total bond.
10 to 24—$3,500 total bond.
25 to 49—$5,000 total bond.
50 to 74—$6,000 total bond.
75 to 99—$7,000 total bond.
100 to 124—$8,000 total bond.
125 to 149—$9,000 total bond.
150 to 199—$10,000 total bond.
200 or more—$10,000 plus $50 for each alien over 200.

(2) *Blanket bonds for importation of workers classified as nonimmigrants under section 101(a)(15)(H).* The following schedule shall be employed by district directors when requiring employers or their agents or representatives to post bond as a condition to importing alien laborers into the United States from the West Indies, the British Virgin Islands, or from Canada:

Less than 500 workers—$15 *each*
500 to 1,000 workers—$10 *each*
1,000 or more workers—$5 *each*

A bond shall not be posted for less than $1,000 or for more than $12,000 irrespective of the number of workers involved. Failure to comply with conditions of the bond will result in the employer's liability in the amount of $200 as liquidated damages for each alien involved.

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I–352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I–323 or Form I–391 of the decision, and, if

declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

[31 FR 11713, Sept. 7, 1966, as amended at 32 FR 9622, July 4, 1967; 33 FR 5255, Apr. 2, 1968; 33 FR 10504, July 24, 1968; 34 FR 1008, Jan. 23, 1969; 34 FR 14760, Sept. 25, 1969; 39 FR 12334, Apr. 5, 1974; 40 FR 42852, Sept. 17, 1975; 48 FR 51144, Nov. 7, 1983; 49 FR 24011, June 11, 1984; 60 FR 21974, May 4, 1995; 62 FR 10336, Mar. 6, 1997]

§ 103.7 Fees.

(a) *Remittances.* (1) Fees shall be submitted with any formal application or petition prescribed in this chapter in the amount prescribed by law or regulation. Except for fees remitted directly to the Board of Immigration Appeals pursuant to the provisions of 8 CFR 1003.8, or as the Attorney General otherwise may provide by regulation, any fee relating to any Department of Justice Executive Office for Immigration Review proceeding shall be paid to, and accepted by, any BCIS office authorized to accept fees. The immigration court does not collect fees. Payment of any fee under this section does not constitute filing of the document with the Board of Immigration Appeals or with the Immigration Court. The Department of Homeland Security shall return to the payer, at the time of payment, a receipt for any fee paid. The BCIS shall also return to the payer any documents, submitted with the fee, relating to any Immigration Court proceeding.

(2) Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Fees in the form of postage stamps shall not be accepted. Remittances to the Department of Homeland Security shall be made payable to the "Department of Homeland Security" except that in case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the "Commissioner of Finance of the Virgin Islands" and, in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam." If an application to the Department of Homeland Security is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Department of Homeland Security. Remittances to the Board of Immigration Appeals shall be made payable to the "United States Department of Justice," in accordance with 8 CFR 1003.8. A charge of $30.00 will be imposed if a check in payment of a fee or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Department of Homeland Security officer for any remittance shall not be binding upon the Department of Homeland Security if the remittance is found uncollectible. Furthermore, legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Department of Homeland Security of the dishonored check.

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this section are associated with the benefit, the adjudication, and the type of request and not solely determined by the form number listed below. The term "form" as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may prescribe on its official Web site at *http//www.uscis.gov*.

(A) *Certification of true copies:* $2.00 per copy.

(B) *Attestation under seal:* $2.00 each.

(C) *Biometric services (Biometric Fee).* For capturing, storing, or using biometrics (Biometric Fee). A service fee of $85 will be charged of any individual who is required to have biometrics captured, stored, or used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric services fee is charged when:

(*1*) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance

Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(*2*) The application or petition fee for the associated benefit request has been waived under paragraph (c) of this section; or

(*3*) The associated benefit request is an Application for Posthumous Citizenship (Form N–644); Refugee/Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); Petition for U Nonimmigrant Status (Form I–918); Application for Naturalization (Form N–400) by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service under paragraph (b)(1)(i)(WW) of this section; Application to Register Permanent Residence or Adjust Status (Form I–485) from an asylee under paragraph (b)(1)(i)(U) of this section; Application To Adjust Status under Section 245(i) of the Act (Supplement A to Form I–485) from an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program from an asylee under paragraph (b)(1)(i)(V) of this section; or a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) meeting the requirements of paragraphs (b)(1)(i)(T)(*1*), (*2*), (*3*) or (*4*) of this section.

(D) *Immigrant visa DHS domestic processing fees*. For DHS domestic processing and issuance of required documents after an immigrant visa is issued by the Department of State: $165.

(E) *Request for a search of indices to historical records to be used in genealogical research (Form G–1041):* $20. The search fee is not refundable.

(F) *Request for a copy of historical records to be used in genealogical research (Form G–1041A):* $20 for each file copy from microfilm, or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional $15. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card (Form I–90)*. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: $365.

(H) *Application for Replacement/Initial Nonimmigrant Arrival–Departure Document (Form I–102)*. For filing a petition for an application for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed: $330.

(I) *Petition for a Nonimmigrant Worker (Form I–129)*. For filing a petition for a nonimmigrant worker: $325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW)*. For an employer to petition on behalf of one or more beneficiaries: $325 plus a supplemental CNMI education funding fee of $150 per beneficiary per year. The CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F)*. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $340; there is no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative (Form I–130).

(L) *Petition for Alien Relative (Form I–130)*. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act: $420.

(M) *Application for Travel Document (Form I–131).* For filing an application for travel document:

(*1*) $135 for a Refugee Travel Document for an adult age 16 or older.

(*2*) $105 for a Refugee Travel Document for a child under the age of 16.

(*3*) $360 for advance parole and any other travel document.

(*4*) No fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I–485) when that application was filed with a fee on or after July 30, 2007.

(N) *Immigrant Petition for Alien Worker (Form I–140).* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $580.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile (Form I–191).* For filing an application for discretionary relief under section 212(c) of the Act: $585.

(P) *Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).* For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: $585.

(Q) *Application for Waiver for Passport and/or Visa (Form I–193).* For filing an application for waiver of passport and/or visa: $585.

(R) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I–212).* For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation: $585.

(S) *Notice of Appeal or Motion (Form I–290B).* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: $630. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries. There is no fee for an appeal or motion associated with a denial of a petition for a special immigrant visa from an Iraqi or Afghan national who worked for or on behalf of the U.S. Government in Iraq or Afghanistan.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $405. The following requests are exempt from this fee:

(*1*) A petition seeking classification as an Amerasian;

(*2*) A self–petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident;

(*3*) A Special Immigrant Juvenile; or

(*4*) An Iraqi or Afghan national who worked for, or on behalf of the U.S. Government in Iraq or Afghanistan.

(U) *Application to Register Permanent Residence or Adjust Status (Form I–485).* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(*1*) $985 for an applicant 14 years of age or older; or

(*2*) $635 for an applicant under the age of 14 years when it is:

(*i*) Submitted concurrently for adjudication with the Form I–485 of a parent;

(*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and

(*iii*) The child's application is based on a relationship to the same individual who is the basis for the child's parent's adjustment of status, or under the same legal authority as the parent.

(*3*) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application to Adjust Status under section 245(i) of the Act (Supplement A to Form I–485).* Supplement A to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: $1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur (Form I–526).* For filing a petition for an alien entrepreneur: $1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I–539).* For filing an application to extend or change nonimmigrant status: $290.

(Y) *Petition to Classify Orphan as an Immediate Relative (Form I–600).* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: $720.

(Z) *Application for Advance Processing of Orphan Petition (Form I–600A).* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): $720. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A subject to the following conditions:

(*1*) The applicant requests an extension of the approval in writing and the request is received by USCIS prior to the expiration date of approval.

(*2*) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(*3*) A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601).* For filing an application for waiver of grounds of inadmissibility: $585.

(BB) *Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Act) (Form I–612).* For filing an application for waiver of the foreign residence requirement under section 212(e) of the Act: $585.

(CC) *Application for Status as a Temporary Resident under Section 245A of the Act (Form I–687).* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(DD) *Application for Waiver of Grounds of Inadmissibility under Sections 245A or 210 of the Act (Form I–690).* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $200.

(EE) *Notice of Appeal of Decision under Sections 245A or 210 of the Act (or a petition under section 210A of the Act) (Form I–694).* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $755.

(FF) *Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99–603) (Form I–698).* For filing an application to adjust status from temporary to permanent resident (under section 245A of Public Law 99–603): $1020. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

(GG) *Petition to Remove the Conditions of Residence based on marriage (Form I–751).* For filing a petition to remove the conditions on residence based on marriage: $505.

(HH) *Application for Employment Authorization (Form I–765):* $380; no fee if filed in conjunction with a pending or concurrently filed Application to Register Permanent Residence or Adjust Status (Form I–485) when that request was filed with a fee on or after July 30, 2007.

(II) *Petition to Classify Convention Adoptee as an Immediate Relative (Form I–800).*

(*1*) There is no fee for the first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A) during the approval period.

(*2*) If more than one Form I–800 is filed during the approval period for different children, the fee is $720 for the second and each subsequent petition submitted.

(*3*) If the children are already siblings before the proposed adoption, however, only one filing fee of $720 is required, regardless of the sequence of submission of the immigration benefit.

(JJ) *Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A).* For filing an application for determination of suitability to adopt a child from a Convention country: $720.

(KK) *Request for Action on Approved Application for Determination of Suitability to Adopt a Child from a Convention Country (Form I–800A, Supplement 3).* This filing fee is not charged if Form I–800 has not been filed based on the approval of the Form I–800A, and Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A: $360.

(LL) *Application for Family Unity Benefits (Form I–817).* For filing an application for voluntary departure under the Family Unity Program: $435.

(MM) *Application for Temporary Protected Status (Form I–821).* For first time applicants: $50. This $50 application fee does not apply to re-registration.

(NN) *Application for Action on an Approved Application or Petition (Form I–824).* For filing for action on an approved application or petition: $405.

(OO) *Petition by Entrepreneur to Remove Conditions (Form I–829).* For filing a petition by entrepreneur to remove conditions: $3,750.

(PP) *Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Pub. L. 105–100) (Form I–881):*

(*1*) $285 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $570.

(*2*) $165 for adjudication by the Immigration Court (a single fee of $165 will be charged whenever applications are filed by two or more aliens in the same proceedings).

(*3*) The $165 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

(QQ) *Application for Authorization to Issue Certification for Health Care Workers (Form I–905):* $230.

(RR) *Request for Premium Processing Service (Form I–907).* The fee must be paid in addition to, and in a separate remittance from, other filing fees. The request for premium processing fee will be adjusted annually by notice in the FEDERAL REGISTER based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: $1,225. The fee for Premium Processing Service may not be waived.

(SS) *Civil Surgeon Designation.* For filing an application for civil surgeon designation: $615. There is no fee for an application from a medical officer in the U.S. Armed Forces or civilian physician employed by the U.S. government who examines members and veterans of the armed forces and their dependents at a military, Department of Veterans Affairs, or U.S. Government facility in the United States.

(TT) *Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).* For filing an application for regional center under the Immigrant Investor Pilot Program: $6,230.

(UU) P*etition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929).* For U–1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: $215.

(VV) *Application to File Declaration of Intention (Form N–300).* For filing an application for declaration of intention to become a U.S. citizen: $250.

(WW) *Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the Act) (Form N–336).* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $650. There is no fee if filed on or after October 1, 2004, by an applicant who has filed an Application for Naturalization under sections 328 or 329 of the Act with respect to military service and whose application has been denied.

(XX) *Application for Naturalization (Form N–400).* For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): $595.

(YY) *Application to Preserve Residence for Naturalization Purposes (Form N–470).* For filing an application for benefits under section 316(b) or 317 of the Act: $330.

(ZZ) *Application for Replacement Naturalization/Citizenship Document (Form N–565)*. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: $345. There is no fee when this application is submitted under 8 CFR 338.5(a) or 343a.1 to request correction of a certificate that contains an error.

(AAA) *Application for Certificate of Citizenship (Form N–600)*. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act for applications filed on behalf of a biological child: $600. For applications filed on behalf of an adopted child: $550. There is no fee for any application filed by a member or veteran of any branch of the United States Armed Forces.

(BBB) *Application for Citizenship and Issuance of Certificate under section 322 of the Act (Form N–600K)*. For filing an application for citizenship and issuance of certificate under section 322 of the Act: $600, for an application filed on behalf of a biological child, and $550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees*. The following fees are applicable to one or more of the immigration components of DHS:

(A) DCL System Costs Fee. For use of a Dedicated Commuter Lane (DCL) located at specific ports-of-entry of the United States by an approved participant in a designated vehicle: $80.00, with the maximum amount of $160.00 payable by a family (husband, wife, and minor children under 18 years of age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by DHS. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: $42 for each additional vehicle enrolled.

(B) *Form I–17*. For filing a petition for school certification: $1,700, plus a site visit fee of $655 for each location listed on the form.

(C) *Form I–68*. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: $16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, and parents of either husband or wife) shall be $32.00.

(D) *Form I–94*. For issuance of Arrival/Departure Record at a land border port-of-entry: $6.00.

(E) *Form I–94W*. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border port-of-entry under section 217 of the Act: $6.00.

(F) *Form I–246*. For filing application for stay of deportation under 8 CFR part 243: $155.00.

(G) *Form I–823*. For application to a PORTPASS program under section 286 of the Act—$25.00, with the maximum amount of $50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: $25.00.

(H) *Form I–901*. For remittance of the I–901 SEVIS fee for F and M students: $200. For remittance of the I–901 SEVIS fee for certain J exchange visitors: $180. For remittance of the I–901 SEVIS fee for J–1 au pairs, camp counselors, and participants in a summer work/travel program: $35. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in federally-funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3 or G–7.

(I) *Special statistical tabulations*—a charge will be made to cover the cost of the work involved: DHS Cost.

(J) *Set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air":* $7.00. Available from DHS, then the Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(K) *Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement):* $50.00.

(L) *Request for authorization for parole of an alien into the United States:* $65.00.

(2) *Fees for copies of records.* Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(3) *Adjustment to fees.* The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the FEDERAL REGISTER. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest $5 increment.

(4) *Fees for immigration court and Board of Immigration Appeals.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees.* (1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card,

(iii) Petition for a CNMI–Only Nonimmigrant Transitional Worker,

(iv) Application for Travel Document when filed to request humanitarian parole,

(v) Application for Advance Permission to Return to Unrelinquished Domicile,

(vi) Notice of Appeal or Motion, when there is no fee for the underlying application or petition or that fee may be waived,

(vii) Petition to Remove the Conditions of Residence based on marriage (Form I–751),

(viii) Application for Employment Authorization,

(ix) Application for Family Unity Benefits,

(x) Application for Temporary Protected Status,

(xi) Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105–110),

(xii) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (under section 336 of the INA),

(xiii) Application for Naturalization,

(xiv) Application to Preserve Residence for Naturalization Purposes,

(xv) Application for Replacement Naturalization/Citizenship Document,

(xvi) Application for Certificate of Citizenship,

(xvii) Application for Citizenship and Issuance of Certificate under section 322 of this Act, and

(xviii) Any fees associated with the filing of any benefit request by a VAWA self-petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E–3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997).

(4) The following fees may be waived only for an alien for which a determination of their likelihood of becoming a public charge under section 212(a)(4) of the Act is not required at the time of an application for admission or adjustment of status.:

(i) Application for Advance Permission to Enter as Nonimmigrant;

(ii) Application for Waiver for Passport and/or Visa;

(iii) Application to Register Permanent Residence or Adjust Status;

(iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible employment-based immigration benefit request.

(i) If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, currently http://www.uscis.gov, those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

(f) *Authority to certify records.* The Director of USCIS, or such officials as he or she may designate, may certify records when authorized under 5 U.S.C.

552 or any other law to provide such records.

[38 FR 35296, Dec. 27, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §103.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTE: At 75 FR 79275, Dec. 20, 2010, §103.7 was amended by removing the word "and" at the end of paragraph (c)(3)(xvii); removing the "." at the end of paragraph (c)(3)(xviii) and adding a ", and" in its place; and by adding a new paragraph (c)(3)(xix), effective Jan. 19, 2011. For the convenience of the user, the added text is set forth as follows:

§ 103.7 Fees.

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(c) * * *

(3) * * *

(xix) Petition for Nonimmigrant Worker (Form I–129) or Application to Extend/Change Nonimmigrant Status (Form I–539), only in the case of an alien applying for E–2 CNMI Investor nonimmigrant status under 8 CFR 214.2(e)(23).

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EDITORIAL NOTE: At 73 FR 55698, Sept. 26, 2008, §103.7 was amended by revising Form I–290B. However the amendment could not be incorporated because the text of the newly revised form was not printed.

§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

Sections 103.8, 103.9, and 103.10 of this part comprise the Service regulations under the Freedom of Information Act, 5 U.S.C. 552. These regulations supplement those of the Department of Justice, 28 CFR part 16, subpart A. As used in this part the following definitions shall apply:

(a) The term *access* means providing a copy of the record requested or affording the opportunity for an in-person review of the original record or a copy thereof. The determination to permit an in-person review is discretionary and will only be made when specifically requested. Whenever providing in-person access will unreasonably disrupt the normal operations of an office, the requester may be sent a copy of the requested records that are nonexempt in lieu of the in-person review.

(b) The term *decision* means a final written determination in a proceeding under the Act accompanied by a statement of reasons. Orders made by check marks, stamps, or brief endorsements which are not supported by a reasoned explanation, or those incorporating preprinted language on Service forms are not *decisions*.

(c) The term *records* includes records of proceedings, documents, reports, and other papers maintained by the Service.

(d) The term *record of proceeding* is the official history of any hearing, examination, or proceeding before the Service, and in addition to the application, petition or other initiating document, includes the transcript of hearing or interview, exhibits, and any other evidence relied upon in the adjudication; papers filed in connection with the proceedings, including motions and briefs; the Service officer's determination; notice of appeal or certification; the Board or other appellate determination; motions to reconsider or reopen; and documents submitted in support of appeals, certifications, or motions.

[32 FR 9623, July 4, 1967, as amended at 40 FR 7236, Feb. 19, 1975; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, June 1, 1993]

§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.

(a) *Precedent decisions.* There may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, bound volumes of designated precedent decisions entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States," each containing a cumulative index. Prior to publication in volume from current precedent decisions, known as interim decisions, are obtainable from the Superintendent of Documents on a single copy or yearly subscription basis. Bound volumes and current precedent decisions may be read at principal Service offices.

(b) *Unpublished decisions.* Each district director in the United States will maintain copies of unpublished Service

and Board decisions relating to proceedings in which the initial decision was made in his district. Each regional commissioner will maintain copies of unpublished decisions made by him. The Central Office will maintain copies on a national basis of unpublished Service decisions.

(c) *Deletion of identifying details.* To the extent that information in decisions is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the deciding officer shall provide for deletion of identifying details, as appropriate, from copies of decisions made available to the public.

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at district offices in the United States and at the Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office and each district office in the United States will provide a reading room or reading area where the material described in this section will be made available to the public. Additional material will be made available in the public reading rooms, including the immigration and nationality laws, title 8 of the United States Code Annotated, title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in parts 299 and 499 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these materials, but fees in accordance with §103.7(b) will be charged for furnishing copies.

[32 FR 9623, July 4, 1967, as amended at 36 FR 20151, Oct. 16, 1971; 40 FR 7237, Feb. 19, 1975; 48 FR 49652, Oct. 27, 1983]

§103.10 Requests for records under the Freedom of Information Act.

(a) *Place and manner of requesting records*—(1) *Place.* Records should be requested from the office that maintains the records sought, if known, or from the Headquarters of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Headquarters, regional offices, service centers, district offices and the following suboffices: Agana, Guam; Albany, NY; Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; and St. Albans, VT. In certain cases, a district director may designate another Service office as a file control office. For locations of the Service's regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

(2) *Manner of requesting records.* All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G–639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and to ensure expeditous handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the

records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to the requester an opportunity to confer with Service personnel to reformulate the request. Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable.

(b) *Authority to grant and deny requests*—(1) *Grant or deny*. The Associate Commissioner for Information Resources Management, regional administrators, district directors, service center directors, and heads of suboffices specified in paragraph (a)(1) of this section, or their designees, may grant or deny requests under exemptions in 5 U.S.C. 552 (b) and (c).

(2) [Reserved]

(3) *Authority to state that a record cannot be located or does not exist*. The head of any office specified in paragraph (a)(1) of this section has authority to notify a requester that a record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of.

(c) *Prompt response*—(1) *Response within 10 days*. Within 10 days (excluding Saturdays, Sundays, and legal holidays) of the receipt of a request by the Service (or in the case of an improperly addressed request, of its receipt by the appropriate office as specified in paragraph (a) of this section), the authorized Service official shall either comply with or deny the request unless an extension of time is requested as required under 28 CFR 16.1(d). A request improperly addressed will not be deemed to have been received for purposes of 5 U.S.C 552 (a)(6) until it has been or would have been received by the appropriate office with the exercise of due diligence by Service personnel.

(2) *Treatment of delay as a denial*. If no substantive reply is made at the end of the 10 working day period, and any properly invoked extension period, requesters may deem their request to be denied and exercise their right to appeal in accordance with 28 CFR 16.8 and paragraph (d)(3) of this section.

(d) *Disposition of requests*—(1) *Form of grant*. When a requested record is available, the responsible office shall notify the requester when and where the record will be available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.10. The Service shall have fulfilled its duty to grant access whenever it provides a copy of the record, or, at its discretion, makes the original record or a copy available for in-person review in response to an express request for such review. In-person review is discretionary and shall not be granted when doing so would unreasonably disrupt the normal operations of a Service office.

(2) *Form of denial*. A reply denying a written request for a record in whole or in part shall be in writing, signed by one of the officials specified in paragraph (b)(1) of this section. The reply shall include a reference to the specific exemption under the Freedom of Information Act authorizing withholding of the records. The notice of denial shall contain a brief explanation of how the exemption applies to the record withheld and, if the deciding official considers it appropriate, a statement of why the exempt record is being withheld. The notice of denial shall include a statement of the right of appeal to the Attorney General under 28 CFR 16.8, and that judicial review will thereafter be available in the district in which the requester resides or has a principle place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Right of appeal*. When a request for records has been denied in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, DC 20530. Both the envelope and letter must be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL."

(e) *Agreement to pay fees*. In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly,

all letters of acknowledgment must confirm the requester's obligation to pay.

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983; 52 FR 2942, Jan. 29, 1987; 58 FR 31148, 31149, June 1, 1993]

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

[58 FR 31149, June 1, 1993]

§ 103.12 Definition of the term "lawfully present" aliens for purposes of applying for Title II Social Security benefits under Public Law 104–193.

(a) *Definition of the term an "alien who is lawfully present in the United States."* For the purposes of section 401(b)(2) of Pub. L. 104–193 only, an "alien who is lawfully present in the United States" means:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the Act for less than 1 year, except:

(i) Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the Act; and

(ii) Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(b)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) Aliens currently in temporary resident status pursuant to section 210 or 245A of the Act;

(ii) Aliens currently under Temporary Protected Status (TPS) pursuant to section 244 of the Act;

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603, as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;

(v) Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);

(vii) Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

(b) *Non-issuance of an Order to Show Cause and non-enforcement of deportation and exclusion orders.* An alien may not be deemed to be lawfully present solely on the basis of the Service's decision not to, or failure to, issue an Order to Show Cause or solely on the basis of the Service's decision not to, or failure to, enforce an outstanding order of deportation or exclusion.

[61 FR 47041, Sept. 6, 1996, as amended at 63 FR 63595, Nov. 16, 1998; 64 FR 8487, Feb. 19, 1999; 65 FR 82255, Dec. 28, 2000]

§ 103.20 Purpose and scope.

(a) Sections 103.20 through 103.36 comprise the regulations of the Service implementing the Privacy Act of 1974, Public Law 93–597. The regulations apply to all records contained in systems of records maintained by the Service which are identifiable by individual name or identifier and which are retrieved by individual name or identifier, except those personnel records governed by regulations of the Office of Personnel Management. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves and request

correction of those records. The regulations also set forth the requirements applicable to Service employees maintaining, collecting, using or disseminating such records.

(b) The Associate Commissioner, Information Systems, shall ensure that the provisions of §§ 103.20 through 103.36 of this title and 28 CFR 16.40 through 16.58, and any revisions, are brought to the attention of and made available to:

(1) Each employee at the time of issuance of the regulations and at the time of any amendments; and

(2) Each new employee at the time of employment.

(c) The Associate Commissioner, Information Systems, shall be responsible for ensuring that employees of the Service are trained in the obligations imposed by the Privacy Act of 1974 (5 U.S.C 522a) and by these regulations.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49652, Oct. 27, 1983; 58 FR 31149, June 1, 1993]

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual who seeks access to records about himself or herself in a system of records must submit a written request in person or by mail to the Freedom of Information/Privacy Act Officer at the location where the records are maintained. If the location is unknown, the request may be submitted to the nearest Service office or to the Headquarters FOIA/PA Officer, 425 I Street, NW., Washington, DC 20536. The outside of the envelope should be marked "Privacy Act Request." A Form G–639, Freedom of Information/Privacy Act Request may be used for convenience and to facilitate identification of the record requested. However, a request may be made in any written form and should clearly identity the record sought by the name and any other personal identifiers for the individual (such as the alien file number or Social Security Account Number), date and place of birth, and type of file in which the record is believed to be located.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person shall establish his identity by the presentation of a single document bearing a photograph (such as a passport, Permanent Resident Card or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) Individuals seeking access to records about themselves by mail shall establish their identify by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

(c) *Verification of guardianship.* The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his own identity, establish the identity of the child or other person he represents as required in paragraph (b) of this section, and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records pertaining to himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Service is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in person or by mail, shall describe the nature of the records sought, the approximate dates covered by the record, the system in which it is thought to be included as described in the "Notice of Systems of Records" published in the

FEDERAL REGISTER, and the identity of the individual or office of the Service having custody of the system of records. In addition, the published "Notice of Systems of Records" for individual systems may include further requirements of specification, where necessary, to retrieve the individual record from the system.

(f) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Privacy Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

[40 FR 44481, Sept. 26, 1975; 40 FR 46092, Oct. 6, 1975, as amended at 42 FR 33025, June 29, 1977; 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June 1, 1993; 63 FR 70315, Dec. 21, 1998]

§ 103.22 Records exempt in whole or in part.

(a) When individuals request records about themselves which are exempt from access pursuant to the Privacy Act exemptions in 5 U.S.C. 552a(d)(5), (j) or (k), their requests shall also be considered under the Freedom of Information Act, 5 U.S.C. 552, and, unless the records are exempt under both Acts, the request shall be granted. If exemptions under both Acts permit the denial of the records sought and there is good reason to invoke the exemptions, the individual shall be provided a denial of his/her request in writing with the governing exemptions cited. If the disclosure of the existence of a criminal law enforcement proceeding record could itself interfere with a pending law enforcement proceeding of which there is reason to believe the subject is unaware, the Service may, during only such time as the circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(1) A request for information classified by the Service under *Executive Order 12356 on National Security Information* requires the Service to review the information to determine whether it continues to warrant classification under the criteria of the Executive Order. Information which no longer warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made

available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

(5) The Service records which are exempted and the reasons for the exemptions are enumerated in 28 CFR 16.99.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June, 1, 1993]

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only with the consent of the responsible agency or component, may the requester be informed of the referral as specified in section 3.4(f) of E.O. 12356.

(b) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the responsible official as specified in §103.10(a) of this part shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the responsible official as specified in §103.10(a) of this part will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, 31150, June, 1, 1993]

§ 103.24 Requests for accounting of record disclosure.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed to the appropriate responsible official as specified in §103.10(a) of this part listed in the "Notice of Systems of Records". Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual except that an accounting need not be made available if it relates to: (a) A disclosure with respect to which no accounting need be kept (see §103.30(c) of this part); (b) A disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (c) An accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a (j) or (k).

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.25 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The responsible official as specified in §103.10(a) of this part has responsibility for determining whether access to records is available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Deputy Attorney General within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The time limits provided by 28 CFR 16.1(d) shall be applicable to requests for access to information pursuant to the Privacy Act of 1974.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.26 Fees for copies of records.

The fees charged by the Service under the Privacy Act shall be those specified in 28 CFR 16.47. Remittances shall be made in accordance with §103.7(a) of this part.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.27 Appeals from denials of access.

An individual who has been denied access by the Service to the records concerning him may appeal that decision in the manner prescribed in 28 CFR 16.48.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.28 Requests for correction of records.

(a) *How made.* A request for amendment or correction is made by the individual concerned, either in person or by mail, by addressing the written request to the FOIA/PA Officer at the location where the record is maintained. The requester's identity must be established as provided in §103.21 of this part. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the FOIA/PA Officer at the location where the system of records is maintained and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise location of the system of records or believes that the same record appears in more than one system, the request may be addressed to the Headquarters FOIA/PA Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. That officer will assist the requester in identifying the location of the records.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Service official shall advise the requester that the request has been received. If a correction is to be made, the requester shall be advised of the right to obtain a copy of the corrected record upon payment of the standard fee, established in 28 CFR 16.47. If a correction or amendment is refused, in whole or in part, the requester shall be given the reasons and advised of the right to appeal to the Assistant Attorney General under 28 CFR 16.50.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed as provided in 28 CFR 16.50.

(d) *Appeal determinations.* 28 CFR 16.50 provides for appeal determinations.

(e) *Statements of disagreement.* Statements of disagreement may be furnished by the individual in the manner prescribed in 28 CFR 16.50.

(f) *Notices of correction or disagreement.* When a record has been corrected, the responsible official as specified in §103.10(a) of this part shall, within thirty working days thereof, advise all prior recipients of the record whose identity can be determined pursuant to the accounting required by the Privacy Act or any other accounting previously made, of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the Service giving reasons for refusing to correct shall be included in the file.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 48 FR 51431, Nov. 9, 1983; 58 FR 31150, June, 1, 1993]

§ 103.29 Records not subject to correction.

The following records are not subject to correction or amendment by individuals:

(a) Transcripts or written statements made under oath;

(b) Transcripts of Grand Jury Proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(c) Pre-sentence reports comprising the property of the courts but maintained in Service files; and

(d) Records duly exempted from correction by notice published in the FEDERAL REGISTER.

§ 103.30 Accounting for disclosures.

(a) An accounting of each disclosure of information for which accounting is required (see §103.24 of this part) shall be attached to the relating record. A copy of Form G–658, Record of Information Disclosure (Privacy Act), or other disclosure document shall be used for this accounting. The responsible official as specified in §103.10(a) of this part shall advise the requester, promptly upon request as described in §103.24, of the persons or agencies outside the Department of Justice to

which records concerning the requester have been disclosed.

(b) Accounting records, at a minimum, shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of the disclosure. Accounting records shall be maintained for at least 5 years, or until the record is destroyed or transferred to the Archives, whichever is later.

(c) Accounting is not required to be kept for disclosures made within the Department of Justice or disclosures made pursuant to the Freedom of Information Act.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31150, June, 1, 1993]

§ 103.31 Notices of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records concerning an individual are subpoenaed by a Grand Jury, court, or a quasi-judicial agency, the official served with the subpoena shall be responsible for assuring that notice of its issuance is provided to the individual. Notice shall be provided within 10 days of the service of the subpoena or, in the case of a Grand Jury subpoena, within 10 days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court in which it is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice of the issuance of subpoenas is not required if the system of records has been exempted from the notice requirement pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the FEDERAL REGISTER.

(b) *Emergency disclosures.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at his last known address within 10 working days of the disclosure. Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§ 103.32 Information forms.

(a) *Review of forms.* The Service shall be responsible for the review of forms it uses to collect information from and about individuals.

(b) *Scope of review.* The Service Forms Control Unit shall review each form to assure that it complies with the requirements of 28 CFR 16.52.

§ 103.33 Contracting record systems.

Any contract by the Service for the operation of a record system shall be in compliance with 28 CFR 16.55.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.34 Security of records systems.

The security of records systems shall be in accordance with 28 CFR 16.54.

§ 103.35 Use and collection of Social Security numbers.

The use and collection of Social Security numbers shall be in accordance with 28 CFR 16.56.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.36 Employee standards of conduct with regard to privacy.

Service employee standards of conduct with regard to privacy shall be in compliance with 28 CFR 16.57.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.37 Precedent decisions.

(a) Proceedings before the immigration judges, the Board of Immigration Appeals and the Attorney General are governed by part 1003 of 8 CFR chapter V.

(b)–(f) [Reserved]

(g) *Decisions as precedents.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall

be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General Service precedent decisions as set forth in §103.3(c).

[68 FR 9832, Feb. 28, 2003]

§103.38 Genealogy Program.

(a) *Purpose.* The Department of Homeland Security, U.S. Citizenship and Immigration Services Genealogy Program is a fee-for-service program designed to provide genealogical and historical records and reference services to genealogists, historians, and others seeking documents maintained within the historical record systems.

(b) *Scope and limitations.* Sections 103.38 through 103.41 comprise the regulations of the Genealogy Program. These regulations apply only to searches for and retrieval of records from the file series described as historical records in 8 CFR 103.39. These regulations set forth the procedures by which individuals may request searches for historical records and, if responsive records are located, obtain copies of those records.

[73 FR 28030, May 15, 2008]

§103.39 Historical Records.

Historical Records are files, forms, and documents now located within the following records series:

(a) *Naturalization Certificate Files (C–Files), from September 27, 1906 to April 1, 1956.* Copies of records relating to all U.S. naturalizations in Federal, State, county, or municipal courts, overseas military naturalizations, replacement of old law naturalization certificates, and the issuance of Certificates of Citizenship in derivative, repatriation, and resumption cases. The majority of C–Files exist only on microfilm. Standard C–Files generally contain at least one application form (Declaration of Intention and/or Petition for Naturalization, or other application) and a duplicate certificate of naturalization or certificate of citizenship. Many files contain additional documents, including correspondence, affidavits, or other records. Only C–Files dating from 1929 onward include photographs.

(b) *Microfilmed Alien Registration Forms, from August 1, 1940 to March 31, 1944.* Microfilmed copies of 5.5 million Alien Registration Forms (Form AR–2) completed by all aliens age 14 and older, residing in or entering the United States between August 1, 1940 and March 31, 1944. The two-page form called for the following information: Name; name at arrival; other names used; street address; post-office address; date of birth; place of birth; citizenship; sex; marital status; race; height; weight; hair and eye color; date, place, vessel, and class of admission of last arrival in United States;

date of first arrival in United States; number of years in United States; usual occupation; present occupation; name, address, and business of present employer; membership in clubs, organizations, or societies; dates and nature of military or naval service; whether citizenship papers filed, and if so date, place, and court for declaration or petition; number of relatives living in the United States; arrest record, including date, place, and disposition of each arrest; whether or not affiliated with a foreign government; signature; and fingerprint.

(c) *Visa Files, from July 1, 1924 to March 31, 1944.* Original arrival records of immigrants admitted for permanent residence under provisions of the Immigration Act of 1924. Visa forms contain all information normally found on a ship passenger list of the period, as well as the immigrant's places of residence for 5 years prior to emigration, names of both the immigrant's parents, and other data. In most cases, birth records or affidavits are attached to the visa, and in some cases, marriage, military, or police records may also be attached to the visa.

(d) *Registry Files, from March 2, 1929 to March 31, 1944.* Original records documenting the creation of immigrant arrival records for persons who entered the United States prior to July 1, 1924, and for whom no arrival record could later be found. Most files also include documents supporting the immigrant's claims regarding arrival and residence (e.g., proofs of residence, receipts, and employment records).

(e) *Alien-Files numbered below 8 million (A8000000), and documents therein dated prior to May 1, 1951.* Individual alien case files (A–files) became the official file for all immigration records created or consolidated after April 1, 1944. The United States issued A–numbers ranging up to approximately 6 million to aliens and immigrants who were within or entered the United States between 1940 and 1945. The United States entered the 6 million and 7 million series of A–numbers between circa 1944 and May 1, 1951. Any documents dated after May 1, 1951, though found in an A–File numbered below 8 million, will remain subject to FOIA/PA restrictions.

[73 FR 28030, May 15, 2008]

§ 103.40 Genealogical Research Requests.

(a) *Nature of requests.* Genealogy requests are requests for searches and/or copies of historical records relating to a deceased person, usually for genealogy and family history research purposes.

(b) *Manner of requesting genealogical searches and records.* Requests must be submitted on Form G–1041, Genealogy Index Search Request, or Form G–1041A, Genealogy Records Request, and mailed to the address listed on the form. Beginning on August 13, 2008, USCIS will accept requests electronically through its Web site at *http://www.USCIS.gov*. A separate request on Form G–1041 must be submitted for each individual searched, and that form will call for the name, aliases, and all alternate spellings relating to the one individual immigrant. Form G–1041A may be submitted to request one or more separate records relating to separate individuals.

(c) *Information required to perform index search.* As required on Form G–1041, all requests for index searches to identify records of individual immigrants must include the immigrant's full name (including variant spellings of the name and/or aliases, if any), date of birth, and place of birth. The date of birth must be at least as specific as a year, and the place of birth must be at least as specific as a country (preferably the country name as it existed at the time of the immigrant's immigration or naturalization). Additional information about the immigrant's date of arrival in the United States, residence at time of naturalization, name of spouse, and names of children may be required to ensure a successful search.

(d) *Information required to retrieve records.* As required on Form G–1041A, requests for copies of historical records or files must identify the record by number or other specific data used by the Genealogy Program Office to retrieve the record. C–Files must be identified by a naturalization certificate number. Forms AR–2 and A–Files numbered below 8 million must be identified by Alien Registration Number. Visa Files must be identified by the Visa File Number. Registry Files must

be identified by the Registry File Number (for example, R–12345).

(e) *Information required for release of records.* Subjects will be presumed deceased if their birth dates are more than 100 years prior to the date of the request. In other cases, the subject is presumed to be living until the requestor establishes to the satisfaction of the Genealogy Program Office that the subject is deceased. As required on Form G–1041A, primary or secondary documentary evidence of the subject's death will be required (including but not limited to death records, published obituaries or eulogies, published death notices, church or bible records, photographs of gravestones, and/or copies of official documents relating to payment of death benefits). All documentary evidence must be attached to Form G–1041A or submitted in accordance with instructions provided on Form G–1041A.

(f) *Processing of index search requests.* This service is designed for customers who are unsure whether USCIS has any record of their ancestor, or who suspect a record exists but cannot identify that record by number. Each request for index search services will generate a search of the indices to determine the existence of responsive historical records. If no record is found, USCIS will notify the customer accordingly. If records are found, USCIS will provide the customer with the search results, including the type of record found and the file number or other information identifying the record. The customer can use this information to request a copy of the record(s).

(g) *Processing of record copy requests.* This service is designed for customers who can identify a specific record or file to be retrieved, copied, reviewed, and released. Customers may identify one or more files in a single request. However, separate fees will apply to each file requested. Upon receipt of requests identifying specific records by number or other identifying information, USCIS will retrieve, review, duplicate, and then mail the record(s) to the requester. It is possible that USCIS will find a record that contains data that is not releasable to the customer. An example would be names and birth dates of persons who might be living. The FOIA/PA only permits release of this type of information when the affected individual submits a release authorization to USCIS. Therefore, the Genealogy Program Office will contact and inform the customer of this requirement. The customer will have the opportunity to submit the release authorization. The customer can also agree to the transfer of the document request to the FOIA/PA program for treatment as a FOIA/PA request as described in 6 CFR Part 5. Document retrieval charges will apply in all cases where documents are retrieved.

[73 FR 28031, May 15, 2008]

§ 103.41 Genealogy request fees.

(a) *Genealogy search fee.* See 8 CFR 103.7(b)(1).

(b) *Genealogy records fees.* See 8 CFR 103.7(b)(1).

(c) *Manner of submission.* When a request is submitted online, credit card payments are required. These payments will be processed through the Treasury Department's Pay.Gov financial management system. Cashier's checks or money orders in the exact amount must be submitted for requests submitted with Form G–1041 or Form G–1041A in accordance with 8 CFR 103.7(a)(1). Personal Checks will not be accepted.

[73 FR 28031, May 15, 2008]

PART 109 [RESERVED]

PART 204—IMMIGRANT PETITIONS

Subpart A—Immigrant Visa Petitions

Sec.